

determine that stipulated penalties for violations of any provision of this Consent Decree need not be paid.

30. Any dispute with respect to Defendant's liability for a stipulated penalty shall be resolved by this Court pursuant to the dispute resolution provisions of Section VIII of this Consent Decree.

31. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity: Provided, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Paragraphs 13.c., 16.f., and 18.e., during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Defendant of any deficiency; (2) with respect to Dispute Resolution under Section VIII, during the period, if any, beginning on the date of U.S. EPA's receipt of Defendant's statement of position and ending on the date that the Director issues a final decision regarding such dispute or, (3) with respect to judicial review, if any, under Paragraph 35, from the date that all briefs described in Paragraph 35 are received by the Court until the Court issues its final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

VIII. DISPUTE RESOLUTION

32. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not

apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

33. The parties shall make reasonable, good faith efforts to resolve informally all disputes or differences of opinion regarding the meaning or implementation of this Consent Decree. If the parties cannot resolve any such dispute, the interpretation advanced by U.S. EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Defendant invokes the dispute resolution provisions of this Section.

34. Defendant shall invoke the formal dispute resolution procedures set forth in Paragraphs 34 thru 38 by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Defendant. Within 15 days after receipt of Defendant's Statement of Position, U.S. EPA will serve on Defendant its Statement of Position, which shall include, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by U.S. EPA. Within 10 days after receipt of U.S. EPA's Statement of Position, Defendant may submit a Reply.

35. Following receipt of Defendant's Statement of Position and reply, if any, submitted pursuant to Paragraph 34, the Director of the Air Division, U.S. EPA Region 5, will issue a final decision resolving the dispute. The Air Division Director's decision shall be binding on the Defendant unless, within 15 days of receipt of such decision, the Defendant files with the Court and serves on the United States a motion for judicial review of the decision setting forth the matter in dispute, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly

implementation of the Consent Decree. Any response by the United States must be filed within 15 days of the date that Defendant's motion is due.

36. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

37. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Defendant under this Consent Decree, not directly in dispute, unless U.S. EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance with any applicable provision of this Consent Decree, except as set forth in Paragraph 31, but payment shall be stayed pending resolution of the dispute. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid as provided in Paragraph 29.

38. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Air Division Director is arbitrary and capricious or otherwise not in accordance with law.

IX. INSPECTIONS

39. Until termination of this Consent Decree, U.S. EPA and their representatives, contractors, consultants, and attorneys shall have the authority to enter the Facility at all times upon proper presentation of credentials to the manager or managers of the Facility for the purposes of:

- a. monitoring the progress of activities required by this Consent Decree;
- b. verifying any data or information submitted to EPA in accordance with the terms of this Consent Decree;

c. conducting, pursuant to written protocols, any sampling or testing that U.S. EPA believes necessary to determine Defendant's compliance with this Consent Decree; or

d. otherwise assessing Defendant's compliance with this Consent Decree.

This provision in no way limits or affects any rights of entry and inspection held by either U.S. EPA pursuant to applicable federal or state laws or regulations.

X. NOTICES AND SUBMISSIONS

40. a. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be submitted by one party to another, such notices or submissions shall be directed to the individuals at the addresses specified in subparagraph "d" below, unless those individuals or their successors give notice of a change to all listed individuals, and their successors. Receipt of written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, U.S. EPA and Defendant, respectively.

b. Defendant's notifications to or communications with U.S. EPA shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested. Such notifications and communications that are sent to U.S. EPA using sources other than the U.S. Postal Service will be deemed submitted on the day they are received by the United States.

c. All notifications and submissions required under this Consent Decree by Chemetco shall be signed by a responsible agent of Chemetco and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared

under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

d. Except as specified otherwise herein, all written notifications or communications between the parties relating to this Consent Decree shall be addressed as follows:

As to the U.S. Dept. of Justice:

[By U.S. Mail]

Chief, Environmental Enforcement Section
U.S. Department of Justice
Re: 90-5-2-1845
P.O. Box 7611
Washington, D.C. 20044

[By Overnight/Courier]

Chief, Environmental Enforcement Section
Re: 90-5-2-1845
U.S. Department of Justice
1425 New York Ave., N.W.
13th Floor
Washington, D.C. 20005
As to U.S. EPA:

Jeffery Trevino
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

Chief, Air Enforcement Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604-3590

As to Defendant:

Chemetco, Inc.
Director of Environmental Health and Safety
Route 3 and Oldenburg Road
Hartford, Illinois 62048

XI. SCOPE OF SETTLEMENT

41. a. Compliance with each and every requirement of this Consent Decree shall satisfy all civil liability of the Defendant for the United States' civil claims under the Clean Air Act specifically alleged in the Complaint through the date of lodging of this Consent Decree.

b. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will result in compliance with the provisions of the Act, its implementing regulations, any permit, or this Consent Decree. Notwithstanding U.S. EPA's review and approval of any plans formulated pursuant to this Consent Decree, Defendant shall remain solely responsible for compliance with the Act, its implementing regulations, and this Consent Decree.

XII. EFFECTIVE DATE

42. This Consent Decree shall be effective upon entry by this Court.

XIII. TERMINATION

43. This Consent Decree may be terminated by this Court upon the Court's granting a

motion by Defendant, after certification by Defendant to the United States, and the Court, that Defendant has achieved compliance with all provisions of this Consent Decree, has been in compliance with all applicable requirements of this Consent Decree, the Act and the regulations promulgated pursuant thereto for twelve (12) consecutive calendar quarters following entry of this Consent Decree and has paid all civil and stipulated penalties due. The United States shall advise the Court, within 30 days of the filing of Defendant's motion, as to the propriety of such motion to terminate.

XIV. FORCE MAJEURE

44. If any event occurs that causes or may cause the Defendant to violate any provision of this Consent Decree, Defendant shall notify the United States in writing within five (5) days of the date on which the Defendant knew or should have known of such event. The notice shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by the Defendant to prevent or minimize the violation and the timetable by which those measures will be implemented. The Defendant shall adopt all reasonable measures to avoid or minimize any such violation. Defendant's failure to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular incident involved, and shall constitute a waiver of the Defendant's right to obtain an extension of time under this Section for its obligations based on such incident.

45. If the parties agree that the violation has been or will be caused by circumstances entirely beyond the control of the Defendant, or any entity controlled by or under the common control of the Defendant, including the Defendant's consultants and contractors, and the Defendant could not

have prevented such violation, the time for performance of such requirement may be extended for a period not to exceed the actual delay resulting from such circumstances, and stipulated penalties shall not be due for said delay. In the event the parties are unable to agree, the matter may be submitted by either party to the Court for resolution pursuant to Section VIII. If the violation is determined by the Court to have been caused entirely by circumstances beyond the control of the Defendant, or any entity controlled by or under the common control of the Defendant, the Defendant may be excused as to that violation for the period of time the violation continues due to such circumstances.

46. The Defendant shall bear the burden of proving that any delay was caused by circumstances entirely beyond the control of the Defendant or any entity controlled by or under the common control of the Defendant.

47. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Consent Decree or changed financial circumstances shall not, in any event, be a force majeure event and shall not serve as a basis for changes in this Consent Decree or extensions of time under this Consent Decree.

48. Compliance with any requirements of this Consent Decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident does not result in an extension of a subsequent compliance date or dates. The Defendant must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

XV. CONTINUING JURISDICTION

49. The Court shall retain jurisdiction after entry of this Consent Decree to modify or enforce its terms or to take any action necessary or appropriate for its construction or execution.

XVI. APPENDICES

50. The following documents are appended to and incorporated in this Consent Decree: Appendix A is a Chart Identifying the Furnace Mode Combinations for Maximum Operations; Appendix B is the Stack Test Protocol; Appendix C is the Raw Materials Management System Protocol Requirements; and Appendix D is the CPMMS Protocol.

XVII. GENERAL PROVISIONS

51. Compliance with the terms of this Consent Decree does not affect Defendant's obligation to comply with all applicable requirements of the Clean Air Act and regulations promulgated thereunder, and all other applicable requirements of Federal, State or local law.

52. This Consent Decree does not limit the ability of the United States to pursue its rights and remedies under any law or regulation or any Order of this Court.

53. Defendant acknowledges that it has been advised that it also may be subject to the applicable requirements of CAA Section 120, 42 U.S.C. Section 7420, providing for assessment of non-compliance penalties for violations occurring after the date of lodging of this Consent Decree.

54. Each party shall bear its own costs and attorney's fees in this action.

55. Except for technical or schedule changes, any modification of this Consent Decree must be in writing, signed by each of the parties, and approved by this Court before it becomes effective. Proposed modifications that do not result in a written agreement may be subject to dispute

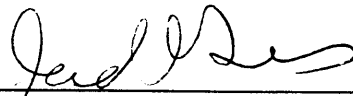
resolution.

56. The public shall be given notice of this Consent Decree and an opportunity to comment on its provisions, pursuant to CAA Section 113(g), 42 U.S.C. § 7413(g), and 28 C.F.R. § 50.7. Following the close of the comment period, the United States may withdraw or modify its consent to the terms of this Consent Decree on the basis of comments received.

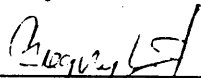
XVIII. SIGNATORIES

57. The undersigned representative of Chemetco, Inc., and the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to execute it and bind the party each person represents to this document.

FOR THE UNITED STATES OF AMERICA:



JOEL GROSS
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice



GREGORY L. SUKYS
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-2068/616-6584 (FAX)

Consent Decree: United States of America v. Chemetco, Inc., Civ. No. 93-482-WDS (S.D. Ill.).

FOR THE UNITED STATES OF AMERICA:

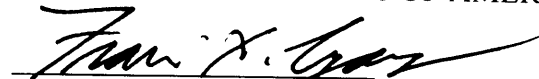
W. CHARLES GRACE
United States Attorney
Southern District of Illinois


GERALD BURKE

Assistant U.S. Attorney
Southern District of Illinois
9 Executive Drive, Suite 300
Fairview Heights, IL 62208
(618) 628-3700/3720 (FAX)

Consent Decree: United States of America v. Chemetco, Inc., Civ. No. 93-482-WDS (S.D. Ill.).

FOR THE UNITED STATES OF AMERICA:



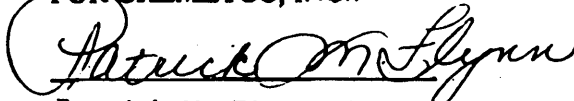
FRANCIS X. LYONS
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



JEFFERY M. TREVINO
Associate Regional Counsel
U.S. Environmental Protection Agency
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Consent Decree: United States of America v. Chemetco, Inc., Civ. No. 93-482-WDS (S.D. Ill.).

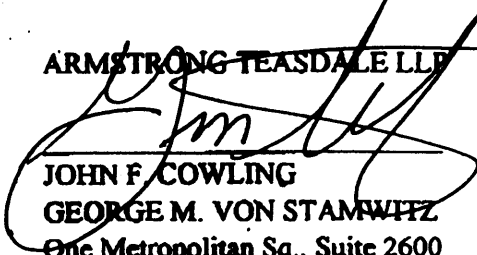
FOR CHEMETCO, INC.:


Patrick M. Flynn, Secretary

Chemetco, Inc.
Route 3 and Oldenburg Road
Hartford, IL 62048

ARMSTRONG TEASDALE LLP

By:


JOHN F. COWLING
GEORGE M. VON STAMWITZ
One Metropolitan Sq., Suite 2600
St. Louis, Missouri 63102
(314) 621-5070

Attorneys for Chemetco, Inc.

IT IS SO ORDERED.

Date:

4 January ~~1999~~ 2000


UNITED STATES DISTRICT COURT JUDGE